

## SUBCOMMITTEE: SOCIAL SERVICES

## HOUSE BILL NO. 933

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Carroll Foy)

A BILL to amend and reenact §§ 16.1-282.1, 63.2-100, 63.2-900.1, 63.2-906, and 63.2-1305 of the Code of Virginia, relating to Kinship Guardianship Assistance program; eligibility; fictive kin.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-282.1, 63.2-100, 63.2-900.1, 63.2-906, and 63.2-1305 of the Code of Virginia are amended and reenacted as follows:**

**§ 16.1-282.1. Permanency planning hearing for children in foster care.**

A. In the case of a child who was the subject of a foster care plan filed with the court pursuant to § 16.1-281, a permanency planning hearing shall be held within 10 months of the dispositional hearing at which the foster care plan pursuant to § 16.1-281 was reviewed if the child (a) was placed through an agreement between the parents or guardians and the local board of social services where legal custody remains with the parents or guardians and such agreement has not been dissolved by court order; or (b) is under the legal custody of a local board of social services or a child welfare agency and has not had a petition to terminate parental rights filed on the child's behalf, has not been placed in permanent foster care, or is age 16 or over and the plan for the child is not independent living. The board or child welfare agency shall file a petition for a permanency planning hearing 30 days prior to the date of the permanency planning hearing scheduled by the court. The purpose of this hearing is to establish a permanent goal for the child and either to achieve the permanent goal or to defer such action through the approval of an interim plan for the child.

To achieve the permanent goal, the petition for a permanency planning hearing shall seek to (i) transfer the custody of the child to his prior family, or dissolve the board's placement agreement and return the child to his prior family; (ii) transfer custody of the child to a relative other than the child's prior family

or to fictive kin for the purpose of establishing eligibility for the Kinship Guardianship Assistance program pursuant to § 63.2-1305, subject to the provisions of subsection A1; (iii) terminate residual parental rights pursuant to § 16.1-277.01 or 16.1-283; (iv) place a child who is 16 years of age or older in permanent foster care pursuant to § 63.2-908; (v) if the child has been admitted to the United States as a refugee or asylee and has attained the age of 16 years or older and the plan is independent living, direct the board or agency to provide the child with services to transition from foster care; or (vi) place a child who is 16 years of age or older in another planned permanent living arrangement in accordance with the provisions of subsection A2. In cases in which a foster care plan approved prior to July 1, 2011, includes independent living as the goal for a child who is not admitted to the United States as an asylee or refugee, the petition shall direct the board or agency to provide the child with services to transition from foster care.

For approval of an interim plan, the petition for a permanency planning hearing shall seek to continue custody with the board or agency, or continue placement with the board through a parental agreement; or transfer custody to the board or child welfare agency from the parents or guardian of a child who has been in foster care through an agreement where the parents or guardian retains custody.

Upon receipt of the petition, if a permanency planning hearing has not already been scheduled, the court shall schedule such a hearing to be held within 30 days. The permanency planning hearing shall be held within 10 months of the dispositional hearing at which the foster care plan was reviewed pursuant to § 16.1-281. The provisions of subsection B of § 16.1-282 shall apply to this petition. The procedures of subsection C of § 16.1-282 and the provisions of subsection G of § 16.1-282 shall apply to the scheduling and notice of proceedings under this section.

A1. The following requirements shall apply to the transfer of custody of the child to a relative other than the child's prior family or to fictive kin for the purpose of establishing eligibility for the Kinship Guardianship Assistance program pursuant to § 63.2-1305 in accordance with the provisions of clause (ii) of subsection A. Any order transferring custody of the child to a relative other than the child's prior family shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii)

is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative should further provide, as appropriate, for any terms or conditions which would promote the child's interest and welfare.

A2. The following requirements shall apply to the selection and approval of placement in another planned permanent living arrangement as the permanent goal for the child in accordance with clause (vi) of subsection A:

1. The board or child welfare agency shall petition for alternative (vi) of subsection A only if the child has a severe and chronic emotional, physical or neurological disabling condition for which the child requires long-term residential treatment; and the board or child welfare agency has thoroughly investigated the feasibility of the alternatives listed in clauses (i) through (v) of subsection A and determined that none of those alternatives is in the best interests of the child. In a foster care plan filed with the petition pursuant to this section, the board or agency shall document the following: (i) the investigation conducted of the placement alternatives listed in clauses (i) through (v) of subsection A and why each of these is not currently in the best interest of the child; (ii) at least one compelling reason why none of the alternatives listed in clauses (i) through (v) is achievable for the child at the time placement in another planned permanent living arrangement is selected as the permanent goal for the child; (iii) the identity of the long-term residential treatment service provider; (iv) the nature of the child's disability; (v) the anticipated length of time required for the child's treatment; and (vi) the status of the child's eligibility for admission and long-term treatment. The court shall ensure that the local department has documentation of the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made to return the child home or secure a placement for the child with a fit and willing relative, including adult siblings, or an adoptive parent, including through efforts that utilize search technology, including social media, to find the child's biological family members. The court shall ask the child about the child's desired permanency outcome and make a judicial determination, accompanied by an explanation of the reasons that the alternatives listed in clauses (i) through (iii) of subsection A continue to not be in the best interest of the child.

2. Before approving alternative (vi) of subsection A as the plan for the child, the court shall find (i) that the child has a severe and chronic emotional, physical or neurological disabling condition; (ii) that the child requires long-term residential treatment for the disabling condition; and (iii) that none of the alternatives listed in clauses (i) through (v) of subsection A is achievable for the child at the time placement in another planned permanent living arrangement is approved as the permanent goal for the child. If the board or agency petitions for alternative (vi), alternative (vi) may be approved by the court for a period of six months at a time.

3. At the conclusion of the permanency planning hearing, if alternative (vi) of subsection A is the permanent plan, the court shall schedule a hearing to be held within six months to review the child's placement in another planned permanent living arrangement in accordance with subdivision A2 4. All parties present at the hearing at which clause (vi) of subsection A is approved as the permanent plan for the child shall be given notice of the date scheduled for the foster care review hearing. Parties not present shall be summoned to appear as provided in § 16.1-263. Otherwise, this subsection A2 shall govern the scheduling and notice for such hearings.

4. The court shall review a foster care plan for any child who is placed in another planned permanent living arrangement every six months from the date of the permanency planning hearing held pursuant to this subsection, so long as the child remains in the legal custody of the board or child welfare agency. The board or child welfare agency shall file such petitions for review pursuant to the provisions of § 16.1-282 and shall, in addition, include in the petition the information required by subdivision A2 1. The petition for foster care review shall be filed no later than 30 days prior to the hearing scheduled in accordance with subdivision A2 3. At the conclusion of the foster care review hearing, if alternative (vi) of subsection A remains the permanent plan, the court shall enter an order that states whether reasonable efforts have been made to place the child in a timely manner in accordance with the permanency plan and to monitor the child's status in another planned permanent living arrangement.

However, if at any time during the six-month approval periods permitted by this subsection, a determination is made by treatment providers that the child's need for long-term residential treatment for the child's disabling condition is eliminated, the board or agency shall immediately begin to plan for post-

discharge services and shall, within 30 days of making such a determination, file a petition for a permanency planning hearing pursuant to subsection A. Upon receipt of the petition, the court shall schedule a permanency planning hearing to be held within 30 days. The provisions of subsection B of § 16.1-282 shall apply to this petition. The procedures of subsection C of § 16.1-282 and the provisions of subsection G of § 16.1-282 shall apply to proceedings under this section.

A3. The following requirements shall apply to the selection and approval of permanent foster care pursuant to clause (iv) of subsection A:

1. The court shall ensure that the local department has documentation of the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made to return the child home or secure a placement for the child with a fit and willing relative, including adult siblings, or an adoptive parent, including through efforts that utilize search technology, including social media, to find the child's biological family members.

2. The court shall ask the child about the child's desired permanency outcome and make a judicial determination, accompanied by an explanation of the reasons that the alternatives listed in clauses (i) through (iii) of subsection A continue to not be in the best interest of the child.

B. The following requirements shall apply to the selection and approval of an interim plan for the child in accordance with subsection A:

1. The board or child welfare agency shall petition for approval of an interim plan only if the board or child welfare agency has thoroughly investigated the feasibility of the alternatives listed in clauses (i) through (v) of subsection A and determined that none of those alternatives is in the best interest of the child. If the board or agency petitions for approval of an interim plan, such plan may be approved by the court for a maximum period of six months. The board or agency shall also file a foster care plan that (i) identifies a permanent goal for the child that corresponds with one of the alternatives specified in clauses (i) through (v) of subsection A; (ii) includes provisions for accomplishing the permanent goal within six months; and (iii) summarizes the investigation conducted of the alternatives listed in clauses (i) through (v) of subsection A and why achieving each of these is not in the best interest of the child at this time. The foster care plan shall describe the child's placement, including the in-state and out-of-state placement

options and whether the child's placement is in state or out of state. If the child's placement is out of state, the foster care plan shall provide the reason why the out-of-state placement is appropriate and in the best interests of the child.

2. Before approving an interim plan for the child, the court shall find:

a. When returning home remains the plan for the child, that the parent has made marked progress toward reunification with the child, the parent has maintained a close and positive relationship with the child, and the child is likely to return home within the near future, although it is premature to set an exact date for return at the time of this hearing; or

b. When returning home is not the plan for the child, that marked progress is being made to achieve the permanent goal identified by the board or child welfare agency and that it is premature to set an exact date for accomplishing the goal at the time of this hearing. The court shall consider the in-state and out-of-state placement options, and if the child has been placed out of state, determine whether the out-of-state placement is appropriate and in the best interests of the child.

3. Upon approval of an interim plan, the court shall schedule a hearing to be held within six months to determine that the permanent goal is accomplished and to enter an order consistent with alternative (i), (ii), (iii), (iv), or (v) of subsection A. All parties present at the initial permanency planning hearing shall be given notice of the date scheduled for the second permanency planning hearing. Parties not present shall be summoned to appear as provided in § 16.1-263. Otherwise, subsection A shall govern the scheduling and notice for such hearings.

C. In each permanency planning hearing and in any hearing regarding the transition of the child from foster care to independent living, the court shall consult with the child in an age-appropriate manner regarding the proposed permanency plan or transition plan for the child, unless the court finds that such consultation is not in the best interests of the child.

D. In cases in which a child is placed by the local board of social services or a licensed child-placing agency in a qualified residential treatment program as defined in § 16.1-228, the provisions of subsection E of § 16.1-281 shall apply to any hearing held pursuant to this section.

E. At the conclusion of the permanency planning hearing held pursuant to this section, whether action is taken or deferred to achieve the permanent goal for the child, the court shall enter an order that states whether reasonable efforts have been made to reunite the child with the child's prior family, if returning home is the permanent goal for the child; or whether reasonable efforts have been made to achieve the permanent goal identified by the board or agency, if the goal is other than returning the child home.

In making this determination, the court shall give consideration to whether the board or agency has placed the child in a timely manner in accordance with the foster care plan and completed the steps necessary to finalize the permanent placement of the child.

**§ 63.2-100. Definitions.**

As used in this title, unless the context requires a different meaning:

"Abused or neglected child" means any child less than 18 years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child, who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such

187 decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has  
188 reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical  
189 treatment; (iii) the parents or other person with legal authority and the child have considered alternative  
190 treatment options; and (iv) the parents or other person with legal authority and the child believe in good  
191 faith that such decision is in the child's best interest. Nothing in this subdivision shall be construed to limit  
192 the provisions of § 16.1-278.4;

193 3. Whose parents or other person responsible for his care abandons such child;

194 4. Whose parents or other person responsible for his care commits or allows to be committed any  
195 act of sexual exploitation or any sexual act upon a child in violation of the law;

196 5. Who is without parental care or guardianship caused by the unreasonable absence or the mental  
197 or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco  
198 parentis;

199 6. Whose parents or other person responsible for his care creates a substantial risk of physical or  
200 mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as  
201 defined in § 55.1-2000, with a person to whom the child is not related by blood or marriage and who the  
202 parent or other person responsible for his care knows has been convicted of an offense against a minor for  
203 which registration is required as a violent sexual offender pursuant to § 9.1-902; or

204 7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined  
205 in the Trafficking Victims Protection Act of 2000, 22 U.S.C § 7102 et seq., and in the Justice for Victims  
206 of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

207 If a civil proceeding under this title is based solely on the parent having left the child at a hospital  
208 or emergency medical services agency, it shall be an affirmative defense that such parent safely delivered  
209 the child to a hospital that provides 24-hour emergency services or to an attended emergency medical  
210 services agency that employs emergency medical services providers, within 14 days of the child's birth.  
211 For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court  
212 may find such a child is a neglected child upon the ground of abandonment.

213 "Adoptive home" means any family home selected and approved by a parent, local board or a  
214 licensed child-placing agency for the placement of a child with the intent of adoption.

215 "Adoptive placement" means arranging for the care of a child who is in the custody of a child-  
216 placing agency in an approved home for the purpose of adoption.

217 "Adult abuse" means the willful infliction of physical pain, injury or mental anguish or  
218 unreasonable confinement of an adult as defined in § 63.2-1603.

219 "Adult day care center" means any facility that is either operated for profit or that desires licensure  
220 and that provides supplementary care and protection during only a part of the day to four or more aged,  
221 infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the  
222 State Board of Health or the Department of Behavioral Health and Developmental Services, and (ii) the  
223 home or residence of an individual who cares for only persons related to him by blood or marriage.  
224 Included in this definition are any two or more places, establishments or institutions owned, operated or  
225 controlled by a single entity and providing such supplementary care and protection to a combined total of  
226 four or more aged, infirm or disabled adults.

227 "Adult exploitation" means the illegal, unauthorized, improper, or fraudulent use of an adult as  
228 defined in § 63.2-1603 or his funds, property, benefits, resources, or other assets for another's profit,  
229 benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the  
230 adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. "Adult  
231 exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an  
232 intentional failure to use the financial resources of an adult in a manner that results in neglect of such  
233 adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the  
234 use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or  
235 services or perform services against his will for another's profit, benefit, or advantage if the adult did not  
236 agree, or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or to perform  
237 such services.

238 "Adult foster care" means room and board, supervision, and special services to an adult who has a  
239 physical or mental condition. Adult foster care may be provided by a single provider for up to three adults.

240 "Adult neglect" means that an adult as defined in § 63.2-1603 is living under such circumstances  
241 that he is not able to provide for himself or is not being provided services necessary to maintain his  
242 physical and mental health and that the failure to receive such necessary services impairs or threatens to  
243 impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult  
244 is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care,  
245 provided that such treatment or care is performed in good faith and in accordance with the religious  
246 practices of the adult and there is a written or oral expression of consent by that adult.

247 "Adult protective services" means services provided by the local department that are necessary to  
248 protect an adult as defined in § 63.2-1603 from abuse, neglect or exploitation.

249 "Assisted living care" means a level of service provided by an assisted living facility for adults  
250 who may have physical or mental impairments and require at least a moderate level of assistance with  
251 activities of daily living.

252 "Assisted living facility" means any congregate residential setting that provides or coordinates  
253 personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for  
254 the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in  
255 a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of  
256 Health or the Department of Behavioral Health and Developmental Services, but including any portion of  
257 such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only  
258 persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled  
259 persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped  
260 pursuant to § 22.1-214, when such facility is licensed by the Department as a children's residential facility  
261 under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the facility not so licensed; and (iv)  
262 any housing project for persons 62 years of age or older or the disabled that provides no more than basic  
263 coordination of care services and is funded by the U.S. Department of Housing and Urban Development,  
264 by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in  
265 this definition are any two or more places, establishments or institutions owned or operated by a single  
266 entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled

267 adults. Maintenance or care means the protection, general supervision and oversight of the physical and  
268 mental well-being of an aged, infirm or disabled individual.

269 "Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who  
270 receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive  
271 these benefits except for excess income.

272 "Birth family" or "birth sibling" means the child's biological family or biological sibling.

273 "Birth parent" means the child's biological parent and, for purposes of adoptive placement, means  
274 parent(s) by previous adoption.

275 "Board" means the State Board of Social Services.

276 "Child" means any natural person under 18 years of age.

277 "Child day center" means a child day program offered to (i) two or more children under the age of  
278 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more  
279 children at any location.

280 "Child day program" means a regularly operating service arrangement for children where, during  
281 the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the  
282 supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

283 "Child-placing agency" means (i) any person who places children in foster homes, adoptive homes  
284 or independent living arrangements pursuant to § 63.2-1819, (ii) a local board that places children in foster  
285 homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221, or (iii) an entity that assists  
286 parents with the process of delegating parental and legal custodial powers of their children pursuant to  
287 Chapter 10 (§ 20-166 et seq.) of Title 20. "Child-placing agency" does not include the persons to whom  
288 such parental or legal custodial powers are delegated pursuant to Chapter 10 (§ 20-166 et seq.) of Title  
289 20. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their  
290 authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

291 "Child-protective services" means the identification, receipt and immediate response to complaints  
292 and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment,

293 and arranging for and providing necessary protective and rehabilitative services for a child and his family  
294 when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

295 "Child support services" means any civil, criminal or administrative action taken by the Division  
296 of Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or  
297 collect child support, or child and spousal support.

298 "Child-welfare agency" means a child day center, child-placing agency, children's residential  
299 facility, family day home, family day system, or independent foster home.

300 "Children's residential facility" means any facility, child-caring institution, or group home that is  
301 maintained for the purpose of receiving children separated from their parents or guardians for full-time  
302 care, maintenance, protection and guidance, or for the purpose of providing independent living services  
303 to persons between 18 and 21 years of age who are in the process of transitioning out of foster care.  
304 Children's residential facility shall not include:

- 305 1. A licensed or accredited educational institution whose pupils, in the ordinary course of events,  
306 return annually to the homes of their parents or guardians for not less than two months of summer vacation;  
307 2. An establishment required to be licensed as a summer camp by § 35.1-18; and  
308 3. A licensed or accredited hospital legally maintained as such.

309 "Commissioner" means the Commissioner of the Department, his designee or authorized  
310 representative.

311 "Department" means the State Department of Social Services.

312 "Department of Health and Human Services" means the Department of Health and Human  
313 Services of the United States government or any department or agency thereof that may hereafter be  
314 designated as the agency to administer the Social Security Act, as amended.

315 "Disposable income" means that part of the income due and payable of any individual remaining  
316 after the deduction of any amount required by law to be withheld.

317 "Energy assistance" means benefits to assist low-income households with their home heating and  
318 cooling needs, including, but not limited to, purchase of materials or substances used for home heating,  
319 repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or

320 repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance  
321 with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the  
322 Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

323 "Family and permanency team" means the group of individuals assembled by the local department  
324 to assist with determining planning and placement options for a child, which shall include, as appropriate,  
325 all biological relatives and fictive kin of the child, as well as any professionals who have served as a  
326 resource to the child or his family, such as teachers, medical or mental health providers, and clergy  
327 members. In the case of a child who is 14 years of age or older, the family and permanency team shall  
328 also include any members of the child's case planning team that were selected by the child in accordance  
329 with subsection A of § 16.1-281.

330 "Family day home" means a child day program offered in the residence of the provider or the home  
331 of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's  
332 own children and any children who reside in the home, when at least one child receives care for  
333 compensation. The provider of a licensed or registered family day home shall disclose to the parents or  
334 guardians of children in their care the percentage of time per week that persons other than the provider  
335 will care for the children. Family day homes serving five through 12 children, exclusive of the provider's  
336 own children and any children who reside in the home, shall be licensed. However, no family day home  
337 shall care for more than four children under the age of two, including the provider's own children and any  
338 children who reside in the home, unless the family day home is licensed or voluntarily registered.  
339 However, a family day home where the children in care are all related to the provider by blood or marriage  
340 shall not be required to be licensed.

341 "Family day system" means any person who approves family day homes as members of its system;  
342 who refers children to available family day homes in that system; and who, through contractual  
343 arrangement, may provide central administrative functions including, but not limited to, training of  
344 operators of member homes; technical assistance and consultation to operators of member homes;  
345 inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available  
346 health and social services.

347 "Fictive kin" means persons who are not related to a child by blood or adoption but have an  
348 established relationship with the child or his family.

349 "Foster care placement" means placement of a child through (i) an agreement between the parents  
350 or guardians and the local board where legal custody remains with the parents or guardians or (ii) an  
351 entrustment or commitment of the child to the local board or licensed child-placing agency. "Foster care  
352 placement" does not include placement of a child in accordance with a power of attorney pursuant to  
353 Chapter 10 (§ 20-166 et seq.) of Title 20.

354 "Foster home" means a residence ~~licensed~~ approved by a child-placing agency or local board in  
355 which any child, other than a child by birth or adoption of such person or a child who is the subject of a  
356 power of attorney to delegate parental or legal custodial powers by his parents or legal custodian to the  
357 natural person who has been designated the child's legal guardian pursuant to Chapter 10 (§ 20-166 et  
358 seq.) of Title 20 and who exercises legal authority over the child on a continuous basis for at least 24 hours  
359 without compensation, resides as a member of the household.

360 "General relief" means money payments and other forms of relief made to those persons mentioned  
361 in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with § 63.2-  
362 401.

363 "Independent foster home" means a private family home in which any child, other than a child by  
364 birth or adoption of such person, resides as a member of the household and has been placed therein  
365 independently of a child-placing agency except (i) a home in which are received only children related by  
366 birth or adoption of the person who maintains such home and children of personal friends of such person;  
367 (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of  
368 § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8; and (iii) a home in which  
369 are received only children who are the subject of a properly executed power of attorney pursuant to  
370 Chapter 10 (§ 20-166 et seq.) of Title 20.

371 "Independent living" means a planned program of services designed to assist a child age 16 and  
372 over and persons who are former foster care children or were formerly committed to the Department of  
373 Juvenile Justice and are between the ages of 18 and 21 in transitioning to self-sufficiency.

374 "Independent living arrangement" means placement of (i) a child at least 16 years of age who is in  
375 the custody of a local board or licensed child-placing agency by the local board or licensed child-placing  
376 agency or (ii) a child at least 16 years of age or a person between the ages of 18 and 21 who was committed  
377 to the Department of Juvenile Justice immediately prior to placement by the Department of Juvenile  
378 Justice, in a living arrangement in which such child or person does not have daily substitute parental  
379 supervision.

380 "Independent living services" means services and activities provided to a child in foster care 14  
381 years of age or older who was committed or entrusted to a local board of social services, child welfare  
382 agency, or private child-placing agency. "Independent living services" may also mean services and  
383 activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the  
384 age of 21 years; (ii) is between the ages of 18 and 21 and who, immediately prior to his commitment to  
385 the Department of Juvenile Justice, was in the custody of a local board of social services; or (iii) is a child  
386 at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department  
387 of Juvenile Justice immediately prior to placement in an independent living arrangement. Such services  
388 shall include counseling, education, housing, employment, and money management skills development,  
389 access to essential documents, and other appropriate services to help children or persons prepare for self-  
390 sufficiency.

391 "Independent physician" means a physician who is chosen by the resident of the assisted living  
392 facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner,  
393 officer, or employee or as an independent contractor with the residence.

394 "Intercountry placement" means the arrangement for the care of a child in an adoptive home or  
395 foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other  
396 entity authorized to make such placements in accordance with the laws of the foreign country under which  
397 it operates.

398 "Interstate placement" means the arrangement for the care of a child in an adoptive home, foster  
399 care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out  
400 of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or

401 nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the  
402 action of any court.

403 "Kinship care" means the full-time care, nurturing, and protection of children by relatives.

404 "Kinship guardian" means the adult relative of a child in a kinship guardianship established in  
405 accordance with § 63.2-1305 who has been awarded custody of the child by the court after acting as the  
406 child's foster parent.

407 "Kinship guardianship" means a relationship established in accordance with § 63.2-1305 between  
408 a child and an adult relative of the child who has formerly acted as the child's foster parent that is intended  
409 to be permanent and self-sustaining as evidenced by the transfer by the court to the adult relative of the  
410 child of the authority necessary to ensure the protection, education, care and control, and custody of the  
411 child and the authority for decision making for the child.

412 "Kinship Guardianship Assistance program" means a program consistent with 42 U.S.C. § 673  
413 that provides, subject to a kinship guardianship assistance agreement developed in accordance with § 63.2-  
414 1305, payments to eligible individuals who have received custody of a relative child of whom they had  
415 been the foster parents.

416 "Local board" means the local board of social services representing one or more counties or cities.

417 "Local department" means the local department of social services of any county or city in this  
418 Commonwealth.

419 "Local director" means the director or his designated representative of the local department of the  
420 city or county.

421 "Merit system plan" means those regulations adopted by the Board in the development and  
422 operation of a system of personnel administration meeting requirements of the federal Office of Personnel  
423 Management.

424 "Parental placement" means locating or effecting the placement of a child or the placing of a child  
425 in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

426 "Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to  
427 the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services;  
428 child care; and general relief.

429 "Qualified assessor" means an entity contracting with the Department of Medical Assistance  
430 Services to perform nursing facility pre-admission screening or to complete the uniform assessment  
431 instrument for a home and community-based waiver program, including an independent physician  
432 contracting with the Department of Medical Assistance Services to complete the uniform assessment  
433 instrument for residents of assisted living facilities, or any hospital that has contracted with the Department  
434 of Medical Assistance Services to perform nursing facility pre-admission screenings.

435 "Qualified individual" means a trained professional or licensed clinician who is not an employee  
436 of the local board of social services or licensed child-placing agency that placed the child in a qualified  
437 residential treatment program and is not affiliated with any placement setting in which children are placed  
438 by such local board of social services or licensed child-placing agency.

439 "Qualified residential treatment program" means a program that (i) provides 24-hour residential  
440 placement services for children in foster care; (ii) has adopted a trauma-informed treatment model that  
441 meets the clinical and other needs of children with serious emotional or behavioral disorders, including  
442 any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this  
443 definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site  
444 and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts  
445 outreach with the child's family members, including efforts to maintain connections between the child and  
446 his siblings and other family; documents and maintains records of such outreach efforts; and maintains  
447 contact information for any known biological family and fictive kin of the child; (v) whenever appropriate  
448 and in the best interest of the child, facilitates participation by family members in the child's treatment  
449 program before and after discharge and documents the manner in which such participation is facilitated;  
450 (vi) provides discharge planning and family-based aftercare support for at least six months after discharge;  
451 (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an organization approved by  
452 the federal Secretary of Health and Human Services; and (viii) requires that any child placed in the

453 program receive an assessment within 30 days of such placement by a qualified individual that (a) assesses  
454 the strengths and needs of the child using an age-appropriate, evidence-based, validated, and functional  
455 assessment tool approved by the Commissioner of Social Services; (b) identifies whether the needs of the  
456 child can be met through placement with a family member or in a foster home or, if not, in a placement  
457 setting authorized by 42 U.S.C. § 672(k)(2), including a qualified residential treatment program, that  
458 would provide the most effective and appropriate level of care for the child in the least restrictive  
459 environment and be consistent with the short-term and long-term goals established for the child in his  
460 foster care or permanency plan; (c) establishes a list of short-term and long-term mental and behavioral  
461 health goals for the child; and (d) is documented in a written report to be filed with the court prior to any  
462 hearing on the child's placement pursuant to § 16.1-281, 16.1-282, 16.1-282.1, or 16.1-282.2.

463 "Registered family day home" means any family day home that has met the standards for voluntary  
464 registration for such homes pursuant to regulations adopted by the Board and that has obtained a certificate  
465 of registration from the Commissioner.

466 "Residential living care" means a level of service provided by an assisted living facility for adults  
467 who may have physical or mental impairments and require only minimal assistance with the activities of  
468 daily living. The definition of "residential living care" includes the services provided by independent  
469 living facilities that voluntarily become licensed.

470 "Sibling" means each of two or more children having one or more parents in common.

471 "Social services" means foster care, adoption, adoption assistance, child-protective services,  
472 domestic violence services, or any other services program implemented in accordance with regulations  
473 adopted by the Board. Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et  
474 seq.) of Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter  
475 14 of Title 51.5 provided by local departments of social services in accordance with regulations and under  
476 the supervision of the Commissioner for Aging and Rehabilitative Services.

477 "Special order" means an order imposing an administrative sanction issued to any party licensed  
478 pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A special  
479 order shall be considered a case decision as defined in § 2.2-4001.

480 "Temporary Assistance for Needy Families" or "TANF" means the program administered by the  
481 Department through which a relative can receive monthly cash assistance for the support of his eligible  
482 children.

483 "Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the  
484 Temporary Assistance for Needy Families program for families in which both natural or adoptive parents  
485 of a child reside in the home and neither parent is exempt from Virginia Initiative for Education and Work  
486 (VIEW) participation under § 63.2-609.

487 "Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social  
488 Security Act, as amended, and administered by the Department through which foster care is provided on  
489 behalf of qualifying children.

490 **§ 63.2-900.1. Kinship foster care.**

491 A. The local board shall, in accordance with regulations adopted by the Board, determine whether  
492 the child has any relative who may be eligible to become a kinship foster parent. Searches for relatives  
493 eligible to serve as kinship foster parents shall be conducted at the time the child enters foster care, at least  
494 annually thereafter, and prior to any subsequent changes to the child's placement setting. The local board  
495 shall take all reasonable steps to provide notice to such relatives of their potential eligibility to become  
496 kinship foster parents and explain any opportunities such relatives may have to participate in the placement  
497 and care of the child, including opportunities available through kinship foster care or kinship guardianship.

498 B. Kinship foster care placements pursuant to this section shall be subject to all requirements of,  
499 and shall be eligible for all services related to, foster care placement contained in this chapter. Subject to  
500 approval by the Commissioner, a local board may grant a waiver of the Board's standards for foster home  
501 approval, set forth in regulations, that are not related to safety. Waivers granted pursuant to this subsection  
502 shall be considered and, if appropriate, granted on a case-by-case basis and shall include consideration of  
503 the unique needs of each child to be placed. Upon request by a local board, the Commissioner shall review  
504 the local board's decision and reasoning to grant a waiver and shall verify that the foster home approval  
505 standard being waived is not related to safety. The approval or disapproval by the Commissioner of the  
506 local board's waiver shall not be considered a case decision as defined in § 2.2-4001.

507 C. The kinship foster parent shall be eligible to receive payment at the full foster care rate for the  
508 care of the child.

509 D. A child placed in kinship foster care pursuant to this section shall not be removed from the  
510 physical custody of the kinship foster parent, provided that the child has been living with the kinship foster  
511 parent for six consecutive months and the placement continues to meet approval standards for foster care,  
512 unless (i) the kinship foster parent consents to the removal; (ii) removal is agreed upon at a family  
513 partnership meeting as defined by the Department; (iii) removal is ordered by a court of competent  
514 jurisdiction; or (iv) removal is warranted pursuant to § 63.2-1517.

515 E. For purposes of this section, "relative" means an adult who is (i) related to the child by blood,  
516 marriage, or adoption or (ii) fictive kin of the child.

517 **§ 63.2-906. Foster care plans; permissible plan goals; court review of foster children.**

518 A. Each child who is committed or entrusted to the care of a local board or to a licensed child-  
519 placing agency or who is placed through an agreement between a local board and the parent, parents or  
520 guardians, where legal custody remains with the parent, parents or guardians, shall have a foster care plan  
521 prepared by the local department, the child welfare agency, or the family assessment and planning team  
522 established pursuant to § 2.2-5207, as specified in § 16.1-281. The representatives of such local  
523 department, child welfare agency, or team shall (i) involve the child's parent(s) in the development of the  
524 plan, except when parental rights have been terminated or the local department or child welfare agency  
525 has made diligent efforts to locate the parent(s) and such parent(s) cannot be located, and any other person  
526 or persons standing in loco parentis at the time the board or child welfare agency obtained custody or the  
527 board or the child welfare agency placed the child and (ii) for any child for whom reunification remains  
528 the goal, meet and consult with the child's parent(s) or other person standing in loco parentis, provided  
529 that the parent(s) or other person has been located and parental rights have not been terminated, no less  
530 than once every two months and at all critical decision-making points throughout the child's foster care  
531 case. The representatives of such department, child welfare agency, or team shall involve the child in the  
532 development of the plan, if such involvement is consistent with the best interests of the child. In cases  
533 where either the parent(s) or child is not involved in the development of the plan, the department, child

welfare agency, or team shall include in the plan a full description of the reasons therefor in accordance with § 16.1-281.

A court may place a child in the care and custody of (a) a public agency in accordance with § 16.1-251 or 16.1-252, and (b) a public or licensed private child-placing agency in accordance with § 16.1-278.2, 16.1-278.4, 16.1-278.5, 16.1-278.6, or 16.1-278.8. Children may be placed by voluntary relinquishment in the care and custody of a public or private agency in accordance with § 16.1-277.01 or §§ 16.1-277.02 and 16.1-278.3. Children may be placed through an agreement where legal custody remains with the parent, parents or guardians in accordance with §§ 63.2-900 and 63.2-903, or § 2.2-5208.

B. Each child in foster care shall be assigned a permanent plan goal to be reviewed and approved by the juvenile and domestic relations district court having jurisdiction of the child's case. Permissible plan goals are to:

1. Transfer custody of the child to his prior family;
2. Transfer custody of the child to a relative other than his prior family or to fictive kin for the purpose of establishing eligibility for the Kinship Guardianship Assistance program pursuant to § 63.2-1305;
3. Finalize an adoption of the child;
4. Place a child who is 16 years of age or older in permanent foster care;
5. Transition to independent living if, and only if, the child is admitted to the United States as a refugee or asylee; or
6. Place a child who is 16 years of age or older in another planned permanent living arrangement in accordance with subsection A2 of § 16.1-282.1.

C. Each child in foster care shall be subject to the permanency planning and review procedures established in §§ 16.1-281, 16.1-282, and 16.1-282.1.

**§ 63.2-1305. Kinship Guardianship Assistance program.**

A. The Kinship Guardianship Assistance program is established to facilitate placements with relatives and ensure permanency for children for whom adoption or being returned home are not appropriate permanency options. Kinship guardianship assistance payments may include Title IV-E

561 maintenance payments, state-funded maintenance payments, state special services payments, and  
562 nonrecurring expense payments made pursuant to this section.

563 B. A child is eligible for kinship guardianship assistance under the program if:

564 1. The child has been removed from his home pursuant to a voluntary placement agreement or as  
565 a result of a judicial determination that continuation in the home would be contrary to the welfare of the  
566 child;

567 2. The child was eligible for foster care maintenance payments under 42 U.S.C. § 672 or under  
568 state law while residing for at least six consecutive months in the home of the prospective kinship  
569 guardian;

570 3. Being returned home or adopted is not an appropriate permanency option for the child;

571 4. The child demonstrates a strong attachment to the prospective kinship guardian, and the  
572 prospective kinship guardian has a strong commitment to caring permanently for the child; and

573 5. The child has been consulted regarding the kinship guardianship if the child is 14 years of age  
574 or older.

575 C. If a child does not meet the eligibility criteria set forth in subsection B but has a sibling who  
576 meets such criteria, the child may be placed in the same kinship guardianship with his eligible sibling, in  
577 accordance with 42 U.S.C. § 671(a)(31), if the local department and kinship guardian agree that such  
578 placement is appropriate. In such cases, kinship guardianship assistance may be paid on behalf of each  
579 sibling so placed.

580 D. In order to receive payments under 42 U.S.C. § 674(a)(5) or pursuant to the Children's Services  
581 Act (§ 2.2-5200 et seq.), the local department and the prospective kinship guardian of a child who meets  
582 the requirements of subsection B shall enter into a written kinship guardianship assistance agreement  
583 negotiated by the Department and containing terms providing for the following:

584 1. The amount of, ~~and the manner in which,~~ each kinship guardianship assistance payment, the  
585 manner in which such payments will be provided, ~~and the manner in which such payment payments~~  
586 be adjusted periodically, in consultation with the kinship guardian, on the basis of the circumstances of  
587 the kinship guardian and the needs of the child;

2. The additional services or assistance, if any, for which the child and kinship guardian will be eligible under the agreement;

3. The procedure by which the kinship guardian may apply for additional services as needed;

4. Subject to 42 U.S.C. § 673(d)(1)(D), assurance that the local department shall pay the total cost of nonrecurring expenses associated with obtaining kinship guardianship of the child, to the extent that the total cost does not exceed \$2,000; and

5. Assurance that the agreement shall remain in effect without regard to the state of residency of the kinship guardian.

E. A kinship guardianship assistance payment on behalf of a child pursuant to this section shall not exceed the foster care maintenance payment that would have been paid on behalf of the child had the child remained in a foster family home.

F. The Board shall promulgate regulations for the Kinship Guardianship Assistance program that are necessary to comply with Title IV-E requirements, including those set forth in 42 U.S.C. § 673. The regulations may set forth qualifications for kinship guardians, the conditions under which a kinship guardianship may be established, the requirements for the development and amendment of a kinship guardianship assistance agreement, and the manner of payments on behalf of siblings placed in the same household.

G. For purposes of this section, "relative" means an adult who is (i) related to the child by blood, marriage, or adoption or (ii) fictive kin of the child.

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